

# Wyoming Expungements 101

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DANIELLE R. COVER

UNIVERSITY OF WYOMING CIVIL LEGAL SERVICES CLINIC

(307) 766-6560

[DCOVER1@UWYO.EDU](mailto:DCOVER1@UWYO.EDU)

# What is an expungement?

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- Sealing of a record relating to any arrest, charge or disposition in a criminal matter.
- Sealed, not erased.
- Relates to records in the state central repository at the division of criminal investigation.
- Civil process that occurs after the criminal matter has been resolved to the fullest extent possible.

# What dispositions are available in Wyoming?

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- **Dismissed:** A ruling by a judge that all or some of the charges in a case are terminated (thrown out) without further testimony or evidence.
- **Not Guilty (Acquittal):** A judgment by a jury or a judge that a defendant is not guilty of the crime as charged. This may result from inappropriate charges having been filed, by plea agreement with the prosecuting attorney, or from a finding that the state has not met its burden of proof at trial.
- **Deferred Adjudication:** Guilty verdict is deferred until the expiration of some conditions imposed by the court, including a probationary term of 1-5 years. If the condition expires satisfactorily, the charge is later dismissed. This is not the same as a finding of not guilty or a direct dismissal of a charge. It is eligible for expungement in limited circumstances.
- **Guilty:** A verdict convicting the defendant of the crime charged. This may result from either a plea agreement with the prosecuting attorney or from a finding after trial that the state has met its burden of proof.
- **Nolo Contendere:** This is also called a plea of “no contest.” A plea in a criminal action having the same legal effect as a plea of guilty and on which the defendant may be sentenced.

# What can be expunged?

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- Records of arrest without charge and dismissals of charges (WS 7-13-1401)
- Records of conviction of misdemeanors (WS 7-13-1501)
- Records of conviction of certain felonies (WS 7-13-1502)
- Records in juvenile and municipal courts (WS 14-6-241)
- Special Rules
  - Child abuse and neglect cases (WS 14-3-213)
  - CHINS (WS 14-6-440)
  - DNA Records (WS 7-19-405)

# Preliminary Questions

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- What kind of charge are we talking about?
- What was the disposition of the case (how was the case resolved)?
- Have you completed all of the requirements of your sentence or deferred adjudication including counseling, probation, drug testing, etc.?
- How long ago did you complete those requirements?

**You should, as a best practice, review the client's entire criminal history to ensure that the client is eligible for expungement.**

# Arrests without Charge/Dismissal

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WS 7-13-1401

Key points:

1. Free
2. Client must sign the petition.
3. 180 days have passed from the date of the last arrest.
4. No formal charges are currently pending AND no convictions relating to the incident giving rise to the arrest OR
5. No charges ever filed as a result of the arrest OR
6. All the filed charges were dismissed.
7. **Special Note: Deferred adjudications are not eligible for expungement under this section! This is true even if the probation is successfully completed and the charge is later dismissed.**

# Misdemeanors

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WS 7-13-1501

Key Points:

1. \$100 filing fee
2. Client must sign the petition.
3. 5 years must have passed since the expiration of the sentence or conditions if the case is a non-status offense. 1 year must have passed if a status offense.
4. The misdemeanor did not involve the use of a firearms AND
5. The petitioner is not a substantial danger to himself or to any identifiable victim or to society.
6. **Special Note: A deferred adjudication may be eligible for expungement if the probation is successfully completed and the charge is later dismissed.**

# Felonies

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WS 7-13-1502

Key Points:

1. \$300 filing fee
2. The client must sign the petition.
3. 10 years must have passed since the conviction and completion of all related sentences and probationary periods, etc.
4. The offense cannot be excluded by statute AND
5. Expiration of the terms of sentence, court conditions, etc. AND
6. Restitution is paid in full as ordered by the court AND
7. Petitioner has not previously pled guilty or NC to or been convicted of a felony AND
8. No firearms was involved AND
9. Petitioner is not a substantial danger to himself or to an identifiable victim or to society.
10. **Special Note: The statute is silent as to the impact of deferred adjudications in felony matters.**



# Prohibited Felonies

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- WS 6-1-104(a)(xii): Murder, manslaughter, kidnapping, sexual assault in the first or second degree, robbery, aggravated assault, aircraft hijacking, arson in the first or second degree, aggravated burglary, sexual abuse of a minor in the first or second degree (WS 6-2-314(a)(i) and WS 6-2-315(a)(ii))
- WS 6-2-106(b): Aggravated homicide by vehicle
- WS 6-2-108: Drug-induced homicide
- WS 6-2-301-320: Sexual assault as defined
- WS 6-2-501(f) & WS 6-2-511(b)(iii): Domestic battery with a sentence of not more than 5 years
- WS 6-2-503 Child abuse
- WS 6-2-508(b): Aggravated assault on a corrections/detention officer

# Prohibited Felonies (Continued)

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- WS 6-4-303(b)(i)-(iii): sexual exploitation of a child
- WS 6-4-402: Incest
- WS 6-4-405: Endangering children by exposure to methamphetamines
- WS 6-5-105: Bribery
- WS 6-5-204(b): Disarming a peace officer
- WS 6-5-206-207: Escape from detention
- WS 6-8-101-102: Use of a firearm in commission of a felony
- WS 7-19-302(g)-(j): Registered sex offenders

# Juvenile Records

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WS 14-6-241

Key Points:

1. No filing fee is listed in the statute.
2. The statute does not indicate if the Petition must be verified.
3. The Petitioner must have reached the age of majority.
4. Petitioner must have been adjudicated delinquent.
5. The delinquent act was a misdemeanor or a municipal offense AND
6. Petitioner has not been convicted of a felony since the juvenile adjudication AND
7. No felony charge is currently pending or being instituted against the Petitioner AND
8. Rehabilitation of the Petitioner has been reached in the opinion of the Court or Prosecutor.

# Other Options: Pardon

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WS 7-13-803-806

Key Points:

1. For felony convictions
2. Application to the governor
3. Governor advises the district attorney who makes a written statement to the governor of specific information.
4. **Special Note: There is no timeline for how long a governor can take to review an application or make a decision about an application.**

# Other Options: Withdrawal of Guilty Plea

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WRCrimP 32(d)

Key Points:

1. Made by Motion
2. For a guilty plea or plea of NC
3. Made before sentence is imposed
4. Defendant must show a just and fair reason.
5. **Special Note: If sentence has been imposed already, the defendant must show that the withdrawal will correct a manifest injustice.**

# Procedure

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1. Complete a Petition.
2. File in the court where the case was heard (or would have been heard in the case of arrest without charge or dismissal).
3. Serve the prosecuting attorney and the DCI for misdemeanors and felonies. The prosecuting attorneys must notify any identifiable victims. Serve the prosecuting attorney in arrests without charge or dismissals.
4. Wait for the state to object or not. Time limits vary.
  - 20 days for arrests without charge/dismissals
  - 30 days for misdemeanors
  - 90 days for felonies
  - Unspecified for juvenile cases

# Procedure (Continued)

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5. Prosecuting attorney may object in writing.
6. Court may call a hearing during which the petitioner, the prosecuting attorney, and any identifiable witnesses who wish may argue or testify.
7. If the state does not file a written objection, petitioner can request the Order for Expungement be signed.
8. Court **has the discretion** to grant or deny the expungement based on pleadings, written objections, and arguments.
9. Even if the state does not file an objection, the court is within its discretion to deny the expungement if the pleadings do not make a sufficient case.
  - Plead rehabilitation – the better the story, the stronger the case
  - Plead not a danger to self, identifiable victims, or society – the better the argument, the stronger the case

# How many expungements can you get?

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- Arrests without charge/dismissals: Unlimited in a lifetime
- Misdemeanors: 1 in a lifetime
- Felonies: 1 in a lifetime
- Juvenile cases: unspecified



# Questions

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Danielle R. Cover

Faculty Director

University of Wyoming College of Law Civil Legal Services Clinic

1000 East University Boulevard

Department 3010

Laramie, Wyoming 82071

(307) 766-6560

dcover1@uwyo.edu